

IN THE UNITED STATES BANKRUPTCY COURT 02 DEC -6 PM 1:04
 FOR THE NORTHERN DISTRICT OF ALABAMA
 SOUTHERN DIVISION

U.S. BANKRUPTCY COURT
 N.D. OF ALABAMA

In re

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MEADOWCRAFT, INC.,

Case No. 02-06910-TOM-11

Debtor.

**MOTION FOR ORDER: (A) AUTHORIZING DEBTOR'S CONTINUED
 PERFORMANCE OF REIMBURSEMENT OBLIGATIONS UNDER WORKERS'
 COMPENSATION INSURANCE POLICIES; (B) AUTHORIZING DEBTOR TO
 SETTLE AND COMPROMISE PRE-PETITION WORKERS' COMPENSATION
 CLAIMS WITHIN PROSCRIBED LIMITS; AND (C) GRANTING RELIEF FROM
 THE AUTOMATIC STAY TO CERTAIN WORKERS' COMPENSATION
CLAIMANTS TO LIQUIDATE CLAIMS**

Meadowcraft, Inc., debtor and debtor-in-possession (the "Debtor"), moves the Court for relief relating to certain pre-petition workers' compensation claims asserted against the Debtor, as follows:

BACKGROUND

1. On September 3, 2002 (the "Filing Date"), the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. § 101, et seq. (the "Bankruptcy Code").

2. The Debtor is operating its business and managing its affairs as debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Debtor's bankruptcy case.

3. The Debtor is a privately-owned corporation organized and existing under

the laws of the state of Delaware with its principal place of business in Birmingham, Alabama.

4. The Debtor during peak production periods employs over 1,700 people, and presently employs over 1,200 people in the State of Alabama. The Debtor owns manufacturing facilities in Birmingham, Jefferson County, Alabama, Wadley, Randolph County, Alabama, and Selma, Dallas County, Alabama. Prior the Filing Date, the Debtor closed its manufacturing and distribution operations in Yuma, Arizona and Mexico.

JURISDICTION AND NOTICE

5. The Debtor brings the Motion pursuant to Sections 105, 362, and 549 of the Bankruptcy Code and Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”). The Court has jurisdiction over the Motion pursuant to 28 U.S.C. § 1334(b). The Motion is a core proceeding under 28 U.S.C. § 157(b)(2)(A).

6. The Debtor has served a copy of the Motion on the Debtor’s 20 largest unsecured creditors, counsel for the Official Committee of Unsecured Creditors, counsel for Bank of America, N.A., Chatham Investments (“Chatham”), counsel for Chatham, LaSalle Business Credit, Inc. (“LaSalle”), counsel for LaSalle, Congress Financial Corporation (Southern) (“Congress”), counsel for Congress, the Bankruptcy Administrator, counsel for known workers’ compensation claimants, and all parties requesting notice.

DESCRIPTION OF WORKERS’ COMPENSATION COVERAGE

7. The Debtor is required by applicable non-bankruptcy law to maintain workers’ compensation insurance for all employees. Under applicable non-bankruptcy law, the

Debtor may not continue business operations without adequate workers' compensation insurance. While the Debtor is not a "self-insured" employer as that term is used under applicable non-bankruptcy law, the Debtor has a \$250,000 deductible (per occurrence) under its workers' compensation insurance that results in the Debtor essentially paying all of its workers' compensation claims.

8. From 1999 to the present, the Debtor was covered by workers' compensation insurance policies (collectively, the "Policies") issued by Royal & SunAlliance ("SunAlliance")¹ and Great American Assurance Company² ("GAAC" and, together with SunAlliance, the "Carriers").

9. Under the Policies, the Carriers, with the assistance of third party administrators and with the consent of the Debtor, process and issue payment to the Debtor's workers' compensation claimants. Under the Policies, the Debtor is contractually obligated to reimburse the Carriers for claims paid on the Debtor's behalf that do not exceed the \$250,000 deductible. If the Debtor fails to honor its reimbursement obligations to the Carriers, the Carriers may cancel the Policies and terminate the Debtor's workers' compensation insurance coverage. The Debtor pays approximately \$280,000 for its workers' compensation insurance coverage.

10. In order to secure its reimbursement obligations to the Carriers of the Debtor's obligations under the Policies, the Debtor has provided clean stand by letters of credit (the "Letters of Credit") to each of the Carriers. The Carriers may draw upon the Letters of Credit if the Debtor fails to reimburse the Carriers for claims paid pursuant to the Policies.

¹ The workers' compensation policies for 1999 and 2000 were issued by the Connecticut Indemnity Company and EBI Indemnity Company, divisions of Royal & SunAlliance. Although the SunAlliance policies were for the 1999 and 2000 years, the policies are still in effect because there are unresolved claims that are not "closed out" for those years.

² GAAC issued the workers' compensation policies for 2001 and the current year.

11. As of the Filing Date, the amount available to SunAlliance under its letter of credit was approximately \$500,000.00. As of the Filing Date, the amount available to GAAC under its letter of credit was approximately \$375,000.00.

12. For the years subject to the Policies, the Debtor estimates its total liability to the workers' compensation claimants is as follows:

<u>Year</u>	<u>Estimated Total Exposure to Workers' Compensation Claimants</u>
1999	\$16,000.00
2000	\$440,000.00
2001	\$60,000.00
2002	\$275,000.00 ³

13. The Debtor is aware of certain claimants asserting workers' compensation claims arising during the 1999, 2000, 2001, and 2002 years. A list of the claimants is attached hereto as **Exhibit A**. The claims asserted by the individuals listed on Exhibit A shall be referred to herein as the "Claims."

NECESSITY OF MAINTAINING CURRENT WORKERS' COMPENSATION INSURANCE AND PAYMENT STRUCTURE

14. Failure to remain current on its workers' compensation obligations will adversely affect the Debtor. Without limitation, failure to pay the Claims may cause the Carriers to cancel the Policies, thus putting the Debtor in violation of certain local and state laws.

15. Additionally, if the Policies are cancelled, the Debtor would not be able to

³ The estimate for the 2002 year includes only known worker's compensation cases and is subject to change to reflect additional claims that may arise or be asserted by claimants.

obtain similar coverage without paying greatly increased premiums or placing a bond or deposit to cover the potential workers' compensation claims. Based upon the size of the Debtor's business, it is likely that the Debtor would be required to pay annual costs of approximately \$2.0 million to maintain adequate coverage. This amount far exceeds the amount of the Claims plus the Debtor's annual expenses under the Policies. Currently, the Debtor's total annual workers' compensation expenses rarely exceed \$800,000.

16. Additionally, nonpayment of the Claims also would have a negative impact upon the morale of the Debtor's employees. While post-petition workers' compensation claims would continue to be paid, the effect of former employees not receiving workers' compensation benefits may lead employees to alternative employers. Due to the nature of the Debtor's operations, the Debtor must have access to a large number of workers. Accordingly, any loss of employees would have a negative effect on the Debtor's business.

17. Due to the Debtor's financial circumstances, the Debtor believes that there are no better alternatives than the Policies. Prior to entering into the Policies, the Debtor evaluated all potential insurance options and concluded that the Policies were more advantageous and cost effective than any other available alternative. Due to the fact that the cost of replacement insurance would far exceed the total amount of the Debtor's pre-petition workers' compensation obligations, payment of the Claims under the Policies will result in overall savings to the Debtor.

18. Moreover, if the Debtor fails to reimburse the Carriers for the Claims, the Carriers will be able to draw upon the Letters of Credit to recover the amount of the Claims. Because the amounts of the Letters of Credit exceed the estimated value of the Claims, the

Debtor would receive no tangible benefit from refusing to pay the Claims. To the contrary, the Debtor's non-payment would only serve to put the Debtor in default of its obligations under applicable state law and the Policies. More importantly, non-payment would result in the Carriers terminating the Policies.

19. The Debtor has budgeted for the Claims and established sufficient reserves specifically for the purpose of resolving and settling the Claims. The cost of expensive replacement insurance, however, is not included in the Debtor's financial forecast.

RELIEF REQUESTED

A. Relief from the Automatic Stay and Request for Authority to Liquidate, Settle, and Pay Workers' Compensation Claims

20. To preserve its insurance coverage and its ability to comply with applicable non-bankruptcy law, the Debtor requests (1) relief from the automatic stay pursuant to Section 362 of the Bankruptcy Code be granted to the Debtor and the workers' compensation claimants identified on Exhibit A to liquidate or settle the Claims, and (2) authority under Sections 105 and 549 of the Bankruptcy Code be granted to the Debtor to pay the liquidated Claims in the ordinary course of business. By separate motion, the Debtor also seeks to employ certain counsel to represent the Debtor with respect to the Claims.

21. In order to efficiently resolve the Claims, the Debtor requests authority to settle the Claims without further approval of the Court so long as the settlement amounts for a Claim does not cause the Debtor to exceed the estimated exposure amount for the specified year after taking into consideration the Debtor's estimated exposure for the remaining claims for the

specified year.⁴ Due to the number, nature, and size of the Claims, the Debtor submits that filing individual settlement motions pursuant to Bankruptcy Rule 9019 would be inefficient, serve to waste the Debtor's assets, and yield no benefit to the estate or its creditors.

22. The Debtor respectfully submits that the Court has cause to authorize the Debtor to liquidate, settle, and pay the Claims. Liquidation, settlement, and payment of the Claims will protect the Debtor's insured status and will further Debtor's reorganization efforts. As noted above, failure to pay the Claims would yield no tangible benefit to the Debtor or its estate, but could result in a termination of the Policies. If the Policies were terminated, in order to avoid violating state and federal laws, the Debtor would be compelled to pay for costly replacement coverage. At this critical stage of the Debtor's reorganization, the Debtor cannot afford to pay increased costs of over \$1 million for coverage substantially similar to what it currently has in place. Accordingly, paying the Claims in order to maintain the Debtor's current insurance coverage and status is necessary to prevent irreparable harm to the Debtor, its estate and creditors.

23. The Debtor is informed and believes that the aggregate amount of the Claims do not exceed the values of the Letters of Credit. Accordingly, because the Carriers have the right to draw upon the Letters of Credit in the event of the Debtor's failure to indemnify, the estate would derive no benefit from such non-payment of the Claims. Moreover, the Debtor seeks authority only to settle the Claims to the extent of its estimated total exposure set forth in paragraph 12, which is less than the outstanding Letters of Credit.

⁴ To the extent any settlement would result, or in the debtor's reasonable judgment may, cause the Debtor to exceed its estimated exposure for a given year, the Debtor will seek approval from this Court of such settlement.

24. The “necessity of payment” doctrine creates, under Section 105(a) of the Bankruptcy Code an exception to the rule prohibiting pre-confirmation payments of pre-petition claims. See In re Just for Feet, 242 B.R. 821, 825-26 (D. Del. 1999). Under the doctrine, courts may allow certain payments of pre-petition claims when those payments are necessary to preserve the chances of successfully reorganizing. See id.; see also In re Sharon Steel, 159 B.R. 730, 736 (Bankr. W.D. Pa. 1993). Courts apply the necessity of payment doctrine when payment of pre-petition claims are “indispensably necessary” to continuing the Debtor’s operations. Sharon Steel, 159 B.R. at 737.

25. The Debtor would receive no benefit from not paying the Claims. Upon such non-payment, the Debtor would place its current workers’ compensation insurance in jeopardy. The cost of obtaining replacement insurance or qualifying for self-insured treatment would be unduly disruptive to the administration of the Debtor’s bankruptcy estate. Other courts have allowed payment of pre-petition workers’ compensation claims when such payments were necessary to maintaining self-insured status. See In re U.N.R. Industries, Inc., 143 B.R. 506, 520-21 (Bankr. N.D. Ill. 1992), rev’d on other grounds, 173 B.R. 149 (N.D. Ill. 1994). Although technically not “self-insured”, the similarity of the Debtor’s insurance coverage to self-insured status makes those cases applicable by analogy to the Debtor’s current situation.

26. Based on the foregoing, modifying the automatic stay to allow the Debtor to process, settle, and liquidate the Claims and authorizing the Debtor to pay the settled or liquidated Claims under Sections 105, 362 and 549 of the Bankruptcy Code is in the best interest of the Debtor, its estate and creditors.

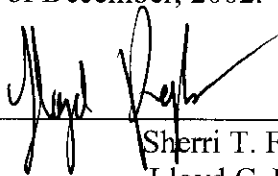
RESERVATION OF RIGHTS

27. The Debtor reserves all right, claims and defensives regarding all workers' compensation claims. For any such payments authorized pursuant to this Motion, such authorization shall not be deemed to convert any pre-petition workers' compensation claims to post-petition claims or elevate the claims above such priority as they would have under the Bankruptcy Code.

WHEREFORE, the Debtor requests that the Court enter an order:

- A. Authorizing the Debtor to continue performance of its reimbursement obligations under the Policies;
- B. Authorizing the Debtor to settle and compromise the Claims on the terms and conditions set forth herein;
- C. Granting the debtor and the workers' compensation claimants identified on Exhibit A relief from the automatic stay to liquidate the Claims; and
- D. Granting such other, further or different relief as may be just and proper.

Respectfully submitted this 6th day of December, 2002.



Sherri T. Freeman
Lloyd C. Peeples

Counsel for the Debtor

OF COUNSEL

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VERIFICATION

STATE OF ALABAMA)
 :
 JEFFERSON COUNTY)

Before me, a notary public in and for said county in said state, personally appeared Marc A. Watson, who, being by me first duly sworn, deposes and says on oath that he is Executive Vice President – Finance and Restructuring of Meadowcraft, Inc., and as such is authorized to make this verification, that he has read the foregoing motion and is informed and believes and, upon the basis of such information and belief, avers that the facts alleged therein are true and correct.

By: Marcus A. Watson
Meadowcraft, Inc.
Marcus A. Watson
Executive Vice President
Finance and Restructuring

Subscribed and sworn to before me this 6th day of December 2000.

Jennifer L. Graves
Notary Public

[NOTARIAL SEAL]

My commission expires: 4/6/04

EXHIBIT A

Workers' Compensation Claimants for Years 1999, 2000, 2001, and 2002

Napoleon Arriaga-Castillo

Deborah Beard

Cynthia Bell

Stanley Birdsong

Norman Briskey

Jose Canto

Major Cantrell

Dru Carson

Billy Craig

Gary Crow

Charlotta Cruz

Benjamin Delgado

Darnetta Doyle

Maricela Duarte

Oscar Flores

Louise Gable

Bobby Hayes

Dale Henderson

Marshal Holder

Eddie Ishman

Clarence Jones

Barabara Malone

Timothy Marable

William Mason

Donald McClury

Randy McCurty

Carol Mills

Cecil Patterson

Eddie Rivers

Earnest Rowden

Barbara Rush

Edith Saunders

Lomonda Smith

Yolanda Smith

James Snow

Delores Tofoya

Vincente Vega

Dorothy Williams

Any additional claimants asserting claims for injuries occurring during the 2002 calendar year